

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

|                                 |   |                                |
|---------------------------------|---|--------------------------------|
| <b>KENNETH SMITH, #B-32032,</b> | ) |                                |
|                                 | ) |                                |
| <b>Plaintiff,</b>               | ) |                                |
|                                 | ) |                                |
| <b>vs.</b>                      | ) | <b>CIVIL NO. 09-cv-733-MJR</b> |
|                                 | ) |                                |
| <b>DONALD GEATZ, et al.,</b>    | ) |                                |
|                                 | ) |                                |
| <b>Defendants.</b>              | ) |                                |

**MEMORANDUM AND ORDER**

**REAGAN, District Judge:**

Plaintiff, a prisoner in the Menard Correctional Center, has filed a pro se civil rights complaint pursuant to 42 U.S.C. § 1983. He also seeks to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.

A prisoner may not bring a civil action or appeal a civil judgment under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). In the Seventh Circuit, a strike may be counted if any portion of an action is dismissed for these enumerated grounds. *See George v. Smith*, 507 F.3d 605, 607-08 (7<sup>th</sup> Cir. 2007); *Boriboune v. Berge*, 391 F.3d 852, 855 (7<sup>th</sup> Cir. 2004).

Plaintiff has had three or more prior prisoner actions dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief may be granted. *See, e.g., Smith v.*

*Cole Taylor Bank*, Case No. 99-cv-7456 (N.D. Ill., filed Nov. 19, 1999); *Smith v. Lee*, Case No. 02-cv-3944 (N.D. Ill., filed June 21, 2002); *Smith v. Aramark Food Mgmt.*, Case No. 04-cv-515 (N.D. Ill., filed Feb. 5, 2004).<sup>1</sup> Further, the allegations in the instant complaint, which involve a disciplinary proceeding, do not show that Plaintiff is under imminent danger of serious physical injury.

**IT IS THEREFORE ORDERED** that the motion for leave to proceed *in forma pauperis* is **DENIED**. This action is **DISMISSED** without prejudice to Plaintiff bringing these claims in a fully pre-paid complaint. All other pending motions are now **MOOT**.

The Clerk shall **CLOSE THIS CASE**.

**IT IS SO ORDERED.**

**DATED this 4<sup>th</sup> day of December, 2009.**

s/ Michael J. Reagan  
**MICHAEL J. REAGAN**  
**United States District Judge**

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<sup>1</sup> Plaintiff omitted mention of this prior litigation in his *in forma pauperis* motion.